



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/160889

PRELIMINARY RECITALS

Pursuant to a petition filed September 29, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on October 23, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined Petitioner's monthly FS benefits in September 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: Pang Thao-Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner is employed for [REDACTED] ([REDACTED]).
3. On August 29, 2014 Petitioner submitted a letter from [REDACTED] to the agency. The letter stated that Petitioner worked 18.75 hours per week earning \$14.28 per hour.

4. Petitioner also reported that she had a mortgage payment, property taxes, and homeowner's insurance. Petitioner reported that the property tax and homeowners insurance were not escrowed with her mortgage payments.
5. On September 8, 2014 the agency sent Petitioner a notice informing her that she would receive \$241.00 in monthly FS benefits effective September 1, 2014.
6. On September 29, 2014 the agency received Petitioner's request for fair hearing.
7. Prior to the hearing Petitioner submitted her paystubs from December. Petitioner's paystubs showed that her total gross monthly income for September was \$691.56. The agency calculated Petitioner's September gross income at \$1,151.32.
8. Petitioner's monthly gross income in September 2014 was \$743.43 for the purposes of calculating her September 2014 monthly FS benefit.

DISCUSSION

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 2 is \$152, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

In this case the only issue with the calculations is whether the agency correctly determined Petitioner's monthly gross income for September 2014. Petitioner does not dispute that her monthly gross income for October 2014 and forward is \$1,151.32. Petitioner submitted paystubs showing that she was paid a total of \$691.56 in September 2014. This total amount reflects two bi-weekly pay checks. The amount Petitioner was actually paid is less than the employment verification letter. However, the case comments reflect that Petitioner told the agency her hours would be less the first two weeks. The agency never verified this information with Petitioner's employer. Petitioner told the agency this on several occasions. She submitted the paystubs to the ALJ the day of the hearing, and the paystubs reflect reduced hours her first two weeks of work. I note that because she is paid bi-weekly there is a 2.15 multiplier. Her average bi-weekly gross pay is \$345.78. ($691.56 / 2 = 345.78$) Next 345.78 multiplied by 2.15 is \$743.43. Thus, Petitioner's monthly gross income for September 2014 is \$743.43. The agency determined that Petitioner's gross income was \$1,151.32. This is incorrect. Although the other figures that the agency used were correct, the remaining calculations are also incorrect because those calculations rely on the monthly gross income as the starting point. I further note that Petitioner did not dispute the calculation of her shelter expenses for September 2014.

CONCLUSIONS OF LAW

The agency incorrectly calculated Petitioner's monthly gross income for September 2014.

THEREFORE, it is

ORDERED

That this case is remanded back to the agency to re-calculate Petitioner's monthly FS benefits for September 2014 using \$743.43 as Petitioner's monthly gross income. The agency has 10 days to comply with this order.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of October, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 30, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability